1990

The State of Utah v. Michael Samuel Weaver : Brief of Appellant

Utah Court of Appeals

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900284-CA

IN THE COURT OF APPEALS OF THE STATE OF UTAH

DOCKET NO.

THE STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
v.	:	
MICHAEL SAMUEL WEAVER,	:	Case No. 14-CA
		Priority No. 2
Defendant/Appellant.	:	

BRIEF OF APPELLANT

Appeal from a judgment and conviction for Theft, a third degree felony, in violation of Utah Code Ann. § 76-6-404 (1989), in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable J. Dennis Frederick, Judge, presiding.

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JURISDICTIONAL STATEMENT

Jurisdiction is conferred on this Court pursuant to Utah Code Ann. § 77-35-26(2)(a) (Supp. 1989) and Utah Code Ann. § 78-2a-3(2)(f) (Supp. 1989), whereby a defendant in a district court criminal action may take an appeal to the Court of Appeals from a final judgment and conviction for any crime other than a first degree or capital felony.

STATUTES AND CONSTITUTIONAL PROVISIONS

The pertinent parts of the following statutes and constitutional provisions are provided in Addendum A:

U.S. Const. amend. IV;

Utah Const. art. 1, § 14;

U.C.A. § 76-6-404 (1989);

U.C.A. § 77-23-3 (1989).

STATEMENT OF THE ISSUES

1. Did the trial court erred in denying Michael Weaver's motion to suppress under the Fourth Amendment of the United States Constitution?

a. In its determination of probable cause, did the trial court err in approving the "Affidavit For Search Warrant" which contained conclusory statements and insufficient information?

b. Should the affidavit have been rejected under a "totality-of-the-circumstances" analysis?

2. Did the trial court erred in denying Michael Weaver's motion to suppress under Article I, Section 14 of the Utah Constitution?

a. How would the issues presented under the Federal Constitution be resolved under the Utah Constitution?

STANDARD OF REVIEW

Appellate courts will reverse a trial court's factual assessment underlying a decision to deny a suppression motion when "it clearly appears that the lower court was in error. Clear error is indicated when the trial court's factual assessment is against the clear weight of the evidence or it induces a firm conviction that a mistake has been committed." State v. Droneburg, 781 P.2d 1303, 1304 (Utah App. 1989) (citations omitted).

STATEMENT OF THE CASE AND NATURE OF THE PROCEEDINGS

On May 12, 1989, the Honorable Sheila McCleve signed a warrant authorizing the search of 1316 East 3900 South. See Addendum B. On March 15, 1990, the Honorable J. Dennis Frederick considered Defendant/Appellant Michael Samuel Weaver's motion to suppress evidence seized during the search on the grounds that the warrant was invalid. Record [hereinafter referred to as "R"] at 148; Transcript of March 15, 1990 Motion to Suppress Proceedings [hereinafter referred to as "MS"] at 2-32. Weaver's motion was denied following the proceeding and then renewed and rejected again at trial. Transcript of March 27 & 28, 1990 Trial Proceedings [hereinafter referred to as "T"] at 32. On March 28, 1990, a jury found Michael Weaver not guilty of Burglary, a third degree felony, (R 96), and guilty of Theft, a felony of the third degree, in violation of Utah Code Ann. § 76-6-404 (1989). (R 95). On April 10, 1990, Judge Frederick sentenced Michael Weaver to zero to five years in the Utah State Prison, together with an order of restitution, a fine, and a recoupment fee. (R 123).

STATEMENT OF THE FACTS

On or about May 7, 1989, "someone" burglarized "Dusty's Vans" and took property valued at over $1000. See Detective Leslie Kent Powers' Affidavit For Search Warrant [hereinafter referred to as "Powers' Affidavit"], page 2 (attached as Addendum B). Two

witnesses, Jay and Linda Lawrence,[1] "stated that they were awakened at 700 hours on May 7, 1989 by someone who was jumping back and forth over a fence between her residence (apartment) and Dusty's Vans." The witnesses described the suspect and later identified him as Michael Weaver. Powers' Affidavit, page 3.

Michael Weaver resided at 1328 East 3900 South with his grandmother. He was then on "Intense Supervised Parole for Receiving Stolen Property and . . . supervised by Sally Powell from the Department of Corrections." Powers' Affidavit, page 3. His mother resided nearby at 1316 East 3900 South. Powers' Affidavit, pages 1 & 3.

Detective Powers interviewed "Ms. Powell who allege[d] that on May 11, 1989, Weaver made numerous trips (5-6) between the houses and in fact was at the house to be searched on the evening of May 10, 1989." Powers' Affidavit, page 3. Detective Powers then alleged, "through his experience and belief that Weaver, being on Intense Supervised Parole, would not keep stolen property at his primary residence knowing that such a place could and is routinely searched by Parole Officers." Powers' Affidavit, page 3. Because of the above-mentioned circumstances and Weaver's activity, Powers alleged, there was probable cause "to believe that the stolen property sought to be seized" was located at 1316 East 3900 South

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[1] Jay and Linda "Larance" are the same Jay and Linda "Lawrence" who witnessed the reported crime. Compare (¶ 34) with Addendum B.

(the residence of Michael Weaver's mother). Powers' Affidavit, page 3.

Detective Powers recited the preceding facts in his affidavit and presented it to the Honorable Sheila McCleve on May 12, 1989. Judge McCleve signed the warrant authorizing a search of the 1316 East 3900 South residence. At approximately 1:16 p.m., May 12, 1989, Detective Powers and various members of Adult Probation and Parole [AP&P] searched Michael Weaver's residence and his mother's residence for evidence of the reported crime. Evidence believed to have been stolen from Dusty's Vans was found in a storage shed located beside 1316 East 3900 South. The police confiscated the evidence found in the shed and one item, a television, found in the mother's home. (MS 9, 14).

On March 15, 1990, during a Motion to Suppress proceeding before the Honorable J. Dennis Frederick, Michael Weaver moved to suppress the evidence seized by the State. (R 148); (MS 2-32). Michael Weaver established that he had received permission to use his mother's home and her storage shed. (MS 20). Weaver placed a lock on the shed door and was only one of two people who possessed a key for the lock. (MS 21-22). Michael Weaver argued that the "Affidavit For Search Warrant" was not supported by "probable cause." The Court denied his motion following the proceeding and then again when Weaver renewed his objection at trial. (T 32).

At trial Jay and Linda Lawrence testified that on the morning of May 7, 1989, they awoke to the sounds of "the clanking of the fence." (T 43). They looked out of their window and observed

"this guy jumping over a fence, throwing things over . . ." (T 35). Jay Lawrence yelled, "Hey, what's going on over there?" (T 35, 45). The "guy," Michael Weaver, "walked up to [their] lawn, . . . came up to [their] window, and attempted to explain his conduct. (T 35, 45). Jay Lawrence then saw Weaver get into his truck and drive out of the apartment parking lot. (T 38). The Lawrences told the police,[2] including Detective Powers, what they had observed. (T 46, 47, 50, 55).

While denying any participation in the burglary, Weaver acknowledged that he did "come into possession of certain items from that burglary." (T 32, 96). The jury found Michael Weaver "guilty" of Theft, and "not guilty" of Burglary. (R 95-96).

SUMMARY OF THE ARGUMENT

The affidavit used in support of the search warrant was invalid. Acting on nothing more than a "hunch," the police simply concluded that since Michael Weaver may have been involved in a burglary, he may have also kept property in his house or in his mother's house. The police knew that they could search the house of Michael Weaver, a parolee, at any time. But in order to "justify" the search of his mother's house, the police attempted to form a nexus between the two residences based solely on an "allegation" which stated that four days after the burglary, "Weaver made numerous trips (5-6)" to his mother's house. The allegation did not

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[2] See infra note 8.

state improper conduct, especially due to the close proximity of the two residences, the familial relationship involved, and the lapse of time which had expired. The affidavit also lacked a "substantial basis" for crediting the hearsay and for the conclusion reached by the affiant. Under the federal "totality of the circumstances" analysis, the court erred in finding that probable cause existed.

Under the Utah Constitution, the court similarly erred because the "veracity" and "basis of the knowledge" requirements were not fulfilled. There was no indication that the allegation of the hearsay informant, a parole officer, was based on personal knowledge, or that the allegation was corroborated by other sources, or that it was reliable. The "totality of the circumstances" analysis should not be followed.

Pursuant to either analysis, the probable cause necessary for an arrest is different than the probable cause required for a search. Probable cause does not exist for the search of each and every residence that a "suspect" happens to visit. The illegally obtained evidence should have been suppressed.

ARGUMENT

POINT I

NO PROBABLE CAUSE SUPPORTED THE ISSUANCE OF THE SEARCH WARRANT UNDER THE FEDERAL CONSTITUTION.

The fourth amendment of the United States Constitution states in relevant part: "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. The language and interpretation of the fourth amendment governs the arguments initially presented by Defendant/Appellant Michael Samuel Weaver. As revealed below, the court should not have issued a search warrant based upon the affidavit submitted by the investigating officer. The affidavit did not contain sufficient information for a determination of "probable cause," and alleged nothing more than conclusions.

In Illinois v. Gates, 462 U.S. 213 (1983), the United States Supreme Court held that the "probable cause" requirement would be determined under a "totality of the circumstances" analysis. "The task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." Gates, 462 U.S. at 238. Though seemingly broad, the Court narrowed the application

of the "totality of the circumstances" standard just one year later in United States v. Leon, 468 U.S. 897 (1984).

The Leon Court acknowledged the deference usually accorded the issuing magistrate's determination but specifically added:

> Deference to the magistrate, however, is not boundless . . . [R]eviewing courts will not defer to a warrant based on an affidavit that does not "provide the magistrate with a substantial basis for determining the existence of probable cause." "Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others."
>
> Even if the warrant application was supported by more than a "bare bones" affidavit, a reviewing court may properly conclude that, notwithstanding the deference that magistrates deserve, the warrant was invalid because the magistrate's probable cause determination reflected an improper analysis of the totality of the circumstances, or because the form of the warrant was improper in some respect.

Leon, 468 U.S. at 914-15 (citations omitted).

In the case at bar, the "Affidavit For Search Warrant" submitted by Detective Leslie Kent Powers summarized the findings of a recent burglary investigation.[3] Detective Powers interviewed two witnesses, Jay and Linda Lawrence, who described the suspect and later identified him as Michael Weaver. The affidavit also stated:

> Weaver is currently on intense supervised parole for receiving stolen property and is supervised by Sally Powell from the Department of Corrections. Weaver resides at 1328 East 3900 South with his grandmother. Weaver's mother [Carol Ahlstrom] resides at the house to be searched [1316 East 3900 South].

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[3] See infra note 8.

> Affiant has interviewed Ms. Powell who alleges that on May 11, 1989, Weaver made numerous trips (5-6) between the houses and in fact was at the house to be searched on the evening of May 10, 1989.
>
> Affiant alleges through his experience and belief that Weaver, being on intense supervised parole, would not keep stolen property at his primary residence knowing that such a place could and is routinely searched by parole officers. Further, affiant alleges that there is probable cause, because of the above-mentioned circumstances and Weaver's activity, to believe that the stolen property sought to be seized is located at the property to be searched hereby.

See Addendum B.

Initially, a distinction should be made between the probable cause necessary to arrest an individual and the probable cause necessary to search an individual's house.

> The fact that there is probable cause to believe that a person has committed a crime does not automatically give the police probable cause to search his house for evidence of that crime. If that were so, there would be no reason to distinguish search warrants from arrest warrants, and cases like Chimel v. California . . . would make little sense. We have consistently held that facts must exist in the affidavit which establish a nexus between the house to be searched and the evidence sought . . . However, that nexus may be established either through direct observation or through normal inferences as to where the articles sought would be located.

United States v. Vastola, 670 F.Supp. 1244, 1271 (D.N.J. 1987) (citations omitted).

The sole "fact" which "established" a nexus between the house to be searched and the evidence sought was Ms. Powell's

allegation[4] "that on May 11, 1989, Weaver made numerous trips (5-6) between the houses and in fact was at the house to be searched on the evening of May 10, 1989." Powers' Affidavit, page 3; Addendum B.

A. THE ALLEGATION DID NOT PROVIDE THE COURT WITH A SUBSTANTIAL BASIS FOR DETERMINING THE EXISTENCE OF PROBABLE CAUSE

The "nexus" leading Detective Powers to believe that Michael Weaver had placed stolen property at his mother's house was the allegation of Ms. Sally Powell. Ms. Powell's allegation, though, was just that--an allegation. If Weaver did in fact make these "trips," did numerous other "informants" first inform Ms. Powell or did Ms. Powell personally observe them? If other informants made the initial observation, the State did not present "a substantial basis for crediting the hearsay." Jones v. United States, 362 U.S. 257 (1960). If Ms. Powell had personal knowledge of these "trips," there was no supportive evidence to corroborate her story and no proof that she had previously provided Detective Powers with accurate information. But cf. Jones v. United States, 362 U.S. 257 (1960) (hearsay information supporting the issuance of a warrant was proper when the informant's report was based on the informant's personal knowledge, the informant had previously

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[4] Other facts did exist which could have led Detective Powers to believe that Michael Weaver would not have kept "stolen property at his primary residence," but no other facts existed--other than the allegation of Ms. Powell--which would have led the detective to believe that Weaver kept the property at his mother's house.

provided accurate information, and the informant's story was corroborated by other sources).

Moreover, Ms. Powell's allegation revealed entirely innocent behavior. Michael Weaver lived at 1328 East 3900 South. His mother, Carol Ahlstrom, lived at 1316 East 3900 South.[5] Powers' Affidavit, pages 1 & 3; Addendum B. Making "numerous trips" between the two houses was not criminal conduct, nor was it even improper conduct. The two houses were in close proximity to one another and there was a familial relationship involved. Michael Weaver frequently visited his mother's home, often using her washer and telephone. (MS 20). An individual on "Intense Supervised Probation," like Michael Weaver, could properly leave his home for extended periods of time and nothing precluded him from visiting his mother.[6] See (T 69). The State even acknowledged that "he had a right to be there." (MS 30).

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[5] Michael Weaver's standing for the search was well established during the Motion to Suppress and at trial. He had received permission to use his mother's home and her storage shed. (MS 20). His expectation of privacy was evident to others through the lock which he placed on the door. (MS 21). He was only one of two people who possessed a key for the lock. (MS 21-22). Individuals outside the family could not gain access to the shed. The officers opened the lock after obtaining the key from Weaver. (T 9). Cf. Minnesota v. Olson, 109 L.Ed.2d 85 (1990).

[6] As a parolee on "Intense Supervision," Michael Weaver had either a 7:00 p.m. curfew, at which time he was required to be at his residence and then remain there until 6:00 a.m. the next morning; or a 9:00 p.m. curfew with a 6:00 a.m. check out time. (T 68, 69, 75). In either situation, there would be nothing unusual about him visiting his mother's residence five or six times on May 11, 1989. The fact that he was at his mother's house the night before, May 10, 1989, supports the frequency of his visits. Moreover, as his trial testimony revealed, his "numerous trips" were completely innocent. (T 103).

The situation may have been different if the houses were far apart, or if a "mother/son" relationship did not exist, or even if Ms. Powell alleged that Weaver had in fact carried property or "fruits of the crime" from one residence to the other. None of these circumstances existed, however; Ms. Powell merely alleged "that on May 11, 1989, Weaver made numerous trips (5-6) between the houses . . . ." Addendum B.

Also absent from the allegation of Ms. Powell was a comparative statement of how often, on average, Michael Weaver "frequented" his mother's house. If his visits were frequent, a nexus could not have been established through his otherwise normal behavior. Indeed, Ms. Powell's allegation did not even indicate the time period involved for Michael Weaver's "numerous trips." Were his visits consistent with "meal hours" or with a "wash and dry cycle" for a few loads of laundry? Regardless of the number of trips or the time intervals alleged, Michael Weaver's "activity" was not inconsistent with his "parolee" program restrictions. See (T 69). The allegation was "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable."[7] State v. Droneburg, 781 P.2d 1303, 1304 (Utah App. 1989) (citations omitted).

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[7] The "good faith" exception of United States v. Leon, 468 U.S. 897 (1984), which the State was required to prove, would not apply because of the unreasonable belief that probable cause existed. No nexus was established for a search of the Ahlstrom residence based upon the "numberous trips" made by Michael Weaver. See State v. Mendoza, 748 P.2d 181 (Utah 1987); State v. Droneburg, 781 P.2d 1303, 1304 (Utah App. 1989).

Even though Ms. Powell was an officer from the Department of Corrections, her allegation was, at best, an unsupported "belief" or "conclusion." Cf. Stanley v. State, 19 Md. App. 508, 313 A.2d 847 (1974) ("Even assuming 'credibility' amounting to sainthood, the judge still may not accept the bare conclusion . . . of a sworn and known and trusted police-affiant"). Her allegation, lacking "sufficient information" to support a determination of probable cause, could not have justified the issuance of a search warrant. If Ms. Powell's allegation was defective, Detective Powers' affidavit should not have been relied upon to search the premises. Detective Powers could not have had probable cause for the search without receiving "direction" from Ms. Powell.

Alternatively, Detective Powers cannot circumvent the warrant requirement by assuming the role of a magistrate and concluding that Ms. Powell's allegation was sufficient. "[A] search and seizure warrant shall issue only when the court--not the affiant, nor any one apart from the court--shall have found that there is probable cause to believe that the property described is unlawfully in the possession of any person." Allen v. Trueman, 100 Utah 36, 110 P.2d 355, 359 (1941); Utah Code Ann. § 77-23-3 (1989) ("no search warrant shall issue except upon a finding by the magistrate"). Otherwise, magistrates could accept, without question, one officer's statement because it was based upon another officer's conclusion:

> A police officer who arrived at the "suspicion," "belief" or "mere conclusion" that [contraband was] in someone's possession could not obtain a warrant.

> But he could convey this conclusion to another police officer, who could then secure the warrant by swearing that he had "received reliable information from a credible person" that the [contraband was] in someone's possession.

Illinois v. Gates, 462 U.S. 213, 278 n.2 (Brennan, J., dissenting) (citations omitted).

Suspecting Michael Weaver as a participant in the crime, Detective Powers arrived at the conclusion that the merchandise may be in the Weaver residence or in his mother's residence. (T 55). Powers knew that Weaver's residence could be searched at any time, cf. (T 71), and "requested that [Ms. Powell] do a parole search where he was living to see if there's a possibility that any of that merchandise that was taken from Dusty's Vans may show up in his residence." (T 55). Ms. Powell informed Powers that Weaver "frequented his mother's residence, which was only . . . 40 or 50 yards from where he was living. He lived in a duplex, . . . and she lived in the next duplex down, that he frequented her residence, and I [Detective Powers] wanted to obtain a search warrant to check out that residence for any of these stolen items." (T 56). Powers then adopted Ms. Powell's allegation to support his conclusory hunch.

In short, Detective Powers did not adhere to the rule that an officer must "provide the magistrate with a substantial basis for determining the existence of probable cause." See Leon, 478 U.S. at 915 (quoting Gates, 462 U.S. at 239). "It is well established that a warrant cannot issue solely on the strength of 'a mere conclusory statement that gives the magistrate virtually no basis at all for making a judgment regarding probable cause.'" State v. Babbell, 770

P.2d 987, 992 (Utah 1989) (citing Illinois v. Gates, 462 U.S. 213, 239 (1983)).

> The fourth amendment requires that when a search warrant is issued on the basis of an affidavit, that affidavit must contain specific facts sufficient to support a determination by a neutral magistrate that probable cause exists. The action of the magistrate, however, must not be "a mere ratification of the bare conclusions of others." Otherwise, the magistrate becomes only a "rubber stamp" for police, abandoning the neutral and detached role which is "a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer."
>
> Thus, "reviewing courts will not defer to a warrant based on an affidavit that does not 'provide the magistrate with a substantial basis for determining the existence of probable cause.'" Even a search warrant obtained under an officer's "objectively reasonable reliance," i.e., "good faith," cannot be validated if it is clear that the warrant is based on an affidavit "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable."

State v. Droneburg, 781 P.2d 1303, 1304 (Utah App. 1989) (citations omitted). Ms. Powell's allegation and Detective Powers' adoption of her statement did not provide the magistrate with a sufficient basis for determining the existence of probable cause. The warrant was invalid.

B. THE "TOTALITY-OF-APPELLANT'S-CIRCUMSTANCES" WOULD HAVE PRECLUDED A FINDING OF PROBABLE CAUSE

Assuming, arguendo, that the information stated in Ms. Powell's allegation was not insufficient, or that it was not conclusory, or that Michael Weaver's "numerous trips" were not innocent, the court still erred in making an improper analysis of

the "totality of the circumstances." United States v. Leon, 468 U.S. 897, 915 (1984). Detective Powers alleged, "through his experience and belief that Weaver, being on Intense Supervised Parole, would not keep stolen property at his primary residence knowing that such a place could and is routinely searched by Parole Officers." Powers' Affidavit, page 3. Having already suspected Weaver as a participant in the crime and inferring that Weaver had carried the "fruits of the crime" from his residence to his mother's residence, Detective Powers alleged that the stolen property was located at 1316 East 3900 South. See Powers' Affidavit, page 4.

A common sense determination, though, would have revealed a contrary disposition. Michael Weaver, a suspect on "Intense Supervised Parole," was observed "in the act" by Jay and Linda Lawrence. (T 35, 45); Powers' Affidavit, page 3. A suspect on "Intense Supervised Parole" who was confronted by two witnesses[8] and

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[8] In his affidavit, Detective Powers admitted reviewing the initial report of Deputy Gary Cummings and the follow-up report of Deputy Sterner. Yet, he conveniently omitted the following material facts from his affidavit. Deputy Sterner reported that when Mr. Lawrence awoke, he "witnessed the man jumping the fence. Mr. [Lawrence] yelled from his window, 'Hey, what are you doing?' The man . . . stated, 'Why, you got a problem?'" See Report #89-42191 (Follow-up report by Deputy Sterner). At trial, the Lawrences testified that Michael Weaver actually came up to their window to explain what he was doing. (T 45).

Another fact reported by Deputy Sterner, but omitted by Detective Powers, concerned the "fieldcarding" of Michael Weaver on May 7, 1989. See Report #89-42191 (Follow-up report by Deputy Sterner). In addition, Detective Powers should not have led the court to believe that there was only one individual involved in the burglary who may have attempted to dispose of the property. Powers' Affidavit, pages 2 & 3. Deputy Cummings reported that "Unknown

(continued)

subjected to random searches of his house would not have waited for four full days before deciding to dispose of the property. See (T 103). Under the circumstances, four days was an excessive length of time.

Moreover, if Weaver did not think that the witnesses could have identified him, his voice, or the truck he drove off in, cf. (T 103), he certainly would have realized that the police were "on his trail" when an officer pulled him over for nothing more than a "fieldcard" stop. At approximately 5:30 p.m., the day of the robbery, an officer pulled Weaver over to take down his name, his address, and his driver's license. See supra note 8.

Given the circumstances--a positive identification of Michael Weaver as a suspect in a crime; the fact that his "status"

(footnote 8 continued)

person/s" burglarized "Dusty's Vans." See Report #89-42191 (Initial report by Deputy Cummings). As the jury later determined, other individuals were involved who could have disposed of the property. See (R 95-96); (T 99).

Had all the pertinent information been presented to the court, it may not have authorized the search warrant. "[T]he deference accorded a magistrate's finding of probable cause does not preclude inquiry into the knowing or reckless falsity of the affidavit on which that determination was based." United States v. Leon, 468 U.S. 897, 914 (1983) (construing Franks v. Delaware, 438 U.S. 154 (1978); State v. Nielsen, 727 P.2d 188, 191 (Utah 1986) ("the affidavit must be evaluated to determine if it will support a finding of probable cause when the omitted information is inserted"). Nevertheless, the court still should have recognized the incongruity between Detective Powers' conclusion and his statements in "support" of his request. The totality of the circumstances summarized in the last paragraph before Point II, see supra pages 18-19, were all presented or known to the magistrate. They did not provide a substantial basis for a finding of probable cause. Illinois v. Gates, 462 U.S. 213, 236 (1983).

subjected his house to random searches; the four day lapse between the commission of the crime and the "numerous trips"; the close proximity of the two houses; the familial relationship involved; and the conclusory unsubstantiated allegation by Ms. Powell--the court erred in determining that probable cause existed. Just as Detective Powers had informed the court, Michael Weaver would not "keep stolen property at his primary residence knowing that such a place could and is routinely searched by Parole Officers." The court should have recognized that Detective Powers' conclusion contradicted his reasoning.

POINT II

NO PROBABLE CAUSE SUPPORTED THE ISSUANCE OF THE SEARCH WARRANT UNDER THE UTAH CONSTITUTION.

"[B]ecause of the similarity between article I, section 14 of the Utah Constitution and the fourth amendment of the United States Constitution, [the Utah Supreme Court has] not in the past drawn any distinctions between the protections respectively afforded by them." State v. Larocco, 794 P.2d 460 (Utah 1990) (citing State v. Watts, 750 P.2d 1219 (Utah 1988)). Nevertheless, the Court:

> by no means ruled out the possibility of doing so in some future case since choosing to give the Utah Constitution a somewhat different construction may prove to be an appropriate method for insulating this state's citizens from the vagaries of inconsistent interpretations given to the fourth amendment by the federal courts.

Larocco, 794 P.2d at 465 (citing Watts, 750 P.2d at 1221 n.8).

The Larocco Court noted that "[t]he United States Supreme Court's interpretation of the fourth amendment, especially in the context of automobile searches, has been the source of much confusion among judges, lawyers, and police." Larocco, 135 Utah Adv. Rep. at 21. After citing various problems with the federal analysis, the Larocco Court attempted to simplify "the search and seizure rules so that they can be more easily followed by the police and the courts . . . ." Id. at 23. If an expectation of privacy is shown, the Court held, article I, section 14 applies. Warrantless searches will then be permitted only where, after the State has proven the existence of both probable cause and exigent circumstance, such a search will "protect the safety of police or the public or . . . the destruction of evidence." Id. at 23-24.

Problems also exist with the federal analysis of "probable cause." See generally Illinois v. Gates, 462 U.S. 213, 274-91 (1983) (Brennan, J., dissenting). In 1983, the Gates Court announced that it would abandon the "two-pronged" test ("veracity" and "basis of knowledge") of Aguilar v. Texas, 378 U.S. 108 (1964), and Spinelli v. United States, 393 U.S. 410 (1969), in favor of a "totality-of-the circumstances" analysis.[9] Gates, 462 U.S. at 238.

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[9] By abandoning the "two-pronged" test from Aguilar and Spinelli, the Gates Court was in fact abandoning well established caselaw. The "Court has developed over the last half a century a set of coherent rules governing a magistrate's consideration of a warrant application and the showing that is necessary to support a finding of probable cause." Gates, 462 U.S. at 275 (Brennan, J., dissenting). In apparent disregard of these standards, the Gates Court also ignored a "veracity" and "basis of knowledge" requirement recognized previously in Utah.

Jnder this analysis, "a deficiency in one [prong] may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." Gates, 462 U.S. at 233.

In 1984, however, the Court allowed a handful of exceptions to invalidate a warrant even though they were all single factor determinations. Leon, 468 U.S. at 914-15. The exceptions permitted an evisceration of the "totality of the circumstances" analysis. On the one hand, a warrant may be invalidated because of either a "knowing or reckless falsity of the affidavit," or "an affidavit that does not 'provide the magistrate with a substantial basis for determining the existence of probable cause.'" (Mere conclusions are not enough). United States v. Leon, 468 U.S. 897, 914-15 (citations omitted). On the other hand, the existence or nonexistence of a single consideration should not invalidate a warrant under the "totality of the circumstances" analysis. Gates, 462 U.S. at 233. In order to clarify these principles,[10] an adjustment should be made in conformity with principles recognized previously in Utah.

Long before Aguilar and Spinelli, the Utah Supreme Court held that well prescribed standards should guide the issuing

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[10] Michael Weaver respectfully requests this Court to consider his analysis of the probable cause determination under Article I, Section 14 of the Utah Constitution for the reasons stated or for any other reason deemed appropriate by this Court. In the past, Utah's appellate courts have seemed to express a willingness to consider alternative approaches under the Utah Constitution. See, e.g., State v. Droneburg, 781 P.2d 1303, 1304, n.1 (Utah App. 1989).

magistrate's determination of what is or is not an unreasonable search or seizure. City of Price v. Jaynes, 113 Utah 89, 191 P.2d 606 (1948). A magistrate should not be able to consider the totality of the circumstances. See id.

In Jaynes, three defendants were convicted of violating an ordinance of the City of Price. The ordinance provided in pertinent part:

> The right of the people of the City of Price, County of Carbon, State of Utah, to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.

Price City Ordinance No. 1050 reprinted in Jaynes, 191 P.2d at 607. After noting the similarities between the United States Constitution and the Price City Ordinance, the Jaynes Court stated:

> We are not furnished with any guides as to what are reasonable or unreasonable searches and seizures. No answer is it to say that the magistrate who hears a charge under the ordinance may consult the statutes and the decisions in the files of American law and by that exploration delineate the area of reasonable from the area of unreasonable searches and seizures. This would put an intolerable if not an impossible burden on the magistrate.

191 P.2d at 608.

While the Price City Ordinance did not contain the clause of the Fourth Amendment which states, "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized," the Jaynes Court did recognize that this clause:

> proceeds to set out the preliminary steps necessary to a lawful search of a dwelling house or a structure. But the general protection given by the Fourth Amendment against unreasonable search and seizure did not prevent other and different conditions as a prerequisite of search or of seizure in respect to different laws designed to accomplish a social or governmental purpose.

Id. (emphasis added).

The Court added that the ordinance expressed only "an existing right and a declared policy. It does not set out with sufficient definiteness the act or acts prohibited or denounced." Id. Concluding that "[t]he acts condemned as unreasonable searches and seizures are nowhere defined in reference to the results necessary to be accomplished," the Court reasoned:

> Evidently the test of what is an unreasonable search or seizure is left to standards not prescribed in the ordinance of Price City but to the exploration in fields of law which prescribe such standards for the state of Utah or the other states. This leaves the tests too much in the air and dependent in each case on what the magistrate hearing the case may within the light of his very limited or plenary knowledge conclude to be reasonable or unreasonable.

Id. at 609 (emphasis added).

The Jaynes Court thus expressed a willingness to consider "the general protection given by the Fourth Amendment against unreasonable search and seizure," but, because a magistrate should not be left with an unprescribed test "too much in the air," the Court allowed "other and different" protections to serve as a "prerequisite of search or of seizure." Hence, a single factor may serve as a necessary protection for a lawful search and seizure.

Though the exact words were not used, the Jaynes decision rejected a "totality-of-the-circumstances" analysis.

The search and seizure prerequisites were established, in part, by the decisions of Allen v. Lindbeck, 97 Utah 471, 93 P.2d 920 (1939), and Allen v. Holbrook, 103 Utah 319, 135 P.2d 242 (1943). In Lindbeck, the Utah Supreme Court considered whether "'probable cause' [was] satisfied by an oath that one 'has reason to believe and does believe[.]'" Allen v. Lindbeck, 97 Utah 471, 93 P.2d 920 (1939). Initially citing with approval "the general rule that probable cause is not shown by an affidavit on information and belief which does not state the facts showing the grounds of the belief," the Lindbeck Court subsequently held, "in line with the overwhelming weight of authority in the federal and state court, that such an affidavit [based only on reason and belief] does not meet the constitutional requirements . . . ." Id. at 923.

Four years later, in Allen v. Holbrook, 103 Utah 319, 135 P.2d 242 (1943), the Court reaffirmed its holding of Lindbeck and specifically questioned the conclusory statements alleged by the affiant. According to the Court, the affiant's conclusory statements had "no facts being set forth upon which a complaint for perjury could be predicated if falsely given . . . The affidavit does not show probable cause to exist for the issuance of a search and seizure warrant under the general laws and the Constitution of the State of Utah." Holbrook, 135 P.2d at 247.

In fact, the Holbrook Court expressly discounted the alleged prior criminal record of the defendant and his alleged

"continuing" criminal activity in its determination of probable cause:

> the affidavit must set forth facts sufficient to cause a discreet and prudent man to believe that the accused had the property sought to be seized. The fact that the affiant says he has that belief, in and of itself, is not sufficient to make probable cause. Furthermore, the allegation in the affidavit that said defendant has twice during the past three months been arrested and convicted for the illegal use of said bottles, and that he refused to refrain from using them is not sufficient to make probable cause as contemplated by the general statute or the Constitution. The affidavit in this case further sets forth that defendant now freely admits that he is continuing the use thereof. This is a mere conclusion of the affiant; no facts being set forth upon which a complaint for perjury could be predicated if falsely given. The substance of the admission is not given nor is the person named to whom the purported admission was made. The affidavit does not show probable cause to exist for the issuance of a search and seizure warrant under the general laws and the Constitution of the State of Utah.

Holbrook, 135 P.2d at 247.

The principles announced in Lindbeck and Holbrook provided needed guidance for a "probable cause" determination under Article I, Section 14, of the Utah Constitution. At the very least, both decisions indicate that the "veracity" and "basis of knowledge" standards remain strict prerequisites for establishing probable cause under the Utah Constitution. For the reasons stated previously in Point I and because of the more clearly defined and recognized protections afforded individuals under the Utah Constitution, Detective Powers' affidavit did not justify a finding of probable cause for the issuance of the search warrant. The warrant was invalid.

POINT III

ILLEGALLY OBTAINED EVIDENCE MUST BE SUPPRESSED.

Since the "Affidavit For Search Warrant" was unlawful, the evidence seized during the subsequent search should have been suppressed. "[E]xclusion of illegally obtained evidence is a necessary consequence of police violations of article I, section 14 [of the Utah Constitution]." State v. Larocco, 794 P.2d 460, 472 (Utah 1990); cf. United States v. Leon, 468 U.S. 897, 961 (1984) (Stevens, J., concurring in part and dissenting in part) ("We cannot intelligibly assume, arguendo, that a search was constitutionally unreasonable but that the seized evidence is admissible because the same search was reasonable"); see supra note 7.

CONCLUSION

Appellant respectfully requests that this Court reverse his conviction and remand this case for a new trial.

SUBMITTED this 14th day of September, 1990.

Ida C. Wallace

KAREN STAM
Attorney for Defendant/Appellant

Ron S. Fujino

RONALD S. FUJINO
Attorney for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, RONALD S. FUJINO, hereby certify that eight copies of the foregoing will be delivered to the Utah Court of Appeals, 400 Midtown Plaza, 230 South 500 East, Salt Lake City, Utah 84102, and four copies to the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114, this 14th day of September, 1990.

Ronald S. Fujino
RONALD S. FUJINO

DELIVERED by _____

this _____ day of September, 1990.

_____

ADDENDUM A

AMENDMENT 4

Unreasonable searches and seizures.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Sec. 14. [Unreasonable searches forbidden—Issuance of warrant.]

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized.

76-6-404. Theft — Elements.

A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof.

77-23-3. Conditions precedent to issuance.

(1) A search warrant shall not issue except upon probable cause supported by oath or affirmation particularly describing the person or place to be searched and the person, property or evidence to be seized.

(2) If the item sought to be seized is evidence of illegal conduct and is in the possession of a person or entity for which there is insufficient probable cause shown to the magistrate to believe that such person or entity is a party to the alleged illegal conduct, no search warrant shall issue except upon a finding by the magistrate that the evidence sought to be seized cannot be obtained by subpoena or that such evidence would be concealed, destroyed, damaged, or altered if sought by subpoena. If such a finding is made and a search warrant issued, the magistrate shall direct upon the warrant such conditions that reasonably afford protection of the following interests of the person or entity in possession of such evidence:

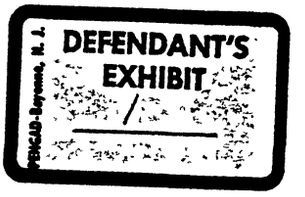
(a) Protection against unreasonable interference with normal business; or

(b) Protection against the loss or disclosure of protected confidential sources of information; or

[illegible] prior or direct restraints on constitutionally pro-

ADDENDUM B

AVID E. YOCOM
ounty Attorney
y: GREGORY G. SKORDAS
eputy County Attorney
ourtside Office Building
31 East 400 South, 3rd Floor
alt Lake City, Utah 84111
hone: (801) 363-7900



IN THE THIRD CIRCUIT COURT, SALT LAKE DEPARTMENT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH)
: ss
County of Salt Lake)

AFFIDAVIT FOR SEARCH WARRANT

BEFORE: Sheila McCleve 450 South 2nd East
JUDGE ADDRESS

The undersigned affiant being first duly sworn, deposes and says:

That he has reason to believe:

That on the premises known as 1316 East 3900 South, the eastmost unit in a duplex located on 3900 South. The duplex is reddish-orange brick with a pink roof and a swamp cooler in the roof.

In the City of Salt Lake, County of Salt Lake, State of Utah, there is now certain property or evidence described as:

Two Ninetendo Games (brain and paddles);
One Cosmo 5" TV Model CTV 701;
(1) Two Magnavox VCP Model #VR9602AT01;
One Tote Vision VCP;
One 9" Samsung TV;
One 9" Sony TV;
One Alpine AM/FM Cassette Car Stereo (black);
(1) Panasonic Stereo AM/FM Cassette Car Stereo (black);
Two Samsong VCP Model VP 2215.

(Continued on page 2) - 3 Samsong

and that said property or evidence:

(x) was unlawfully acquired or is unlawfully possessed, or
(x) has been used to commit or conceal a public offense, or
(x) is being possessed with the purpose to use it as a means of committing or concealing a public offense, or
(x) consists of an item or constitutes evidence of illegal conduct, possessed by a party to the illegal conduct, or
(x) consists of an item or constitutes evidence of illegal conduct, possessed by a person or entity not a party to the illegal conduct. [Note requirements of Utah Code Annotated, 77-23-3(2)].

Affiant believes the property and evidence described above is evidence of the crime(s) of Burglary, Theft, Receiving Stolen Property.

The facts to establish the grounds for issuance of a Search Warrant are:

Affiant, Leslie Kent Powers, is a detective with the Salt Lake County Sheriff's Office and has been such for 1 1/2 years. Affiant has been a deputy Salt Lake County Sheriff for 5 years. Affiant is currently assigned as a burglary detective assigned as such for the past 1 1/2 years with Salt Lake County. Affiant has had extensive training with local law enforcement in the area of burglary investigation.

Affiant has reviewed the report #89-42191 (Initial Report) of Deputy Gary Cummings which alleges tht on or about May 7, 1989 someone entered into the east back building of Dusty's Vans at 3405 South State in Salt Lake County through the east doors. Entry was made by prying a metal door. Joe Torres of Dusty's Vans reports that the forced entry was made between 2300 hours on May 6, 1989 and 1025 hours on May 7, 1989 and that the items listed above were removed from the building, valued at well over $1,000.00.

Affiant has reviewed the report #89-42191 (follow-up report) of Deputy Sterner which alleges that the deputy interviewed Dave Torgerson of Dusty's Vans who located two witnesses to the above-referenced burglary.

(Continued on page 3)

FIDAVIT FOR SEARCH WARRANT

Affiant personally interviewed witnesses Jay Larance and nda Larance who stated that they were awakened at 700 hours on May 1989 by someone who was jumping back and forth over a fence :tween her residence (apartment) and Dusty's Vans. Both of these tnesses observed the man who then got into a blue Mitsubishi truck, .th a temporary sticker in the rear window. The man was identified ; approximately 6' tall, in his 30's with short blonde hair wearing ıorts and a black tank top.

Affiant showed both witnesses a photospread including ɜaver's picture and he was positively identified by both witnesses s the man described above, observed climbing the fence to Dusty's ans.

Weaver is currently on Intense Supervised Parole for eceiving Stolen Property and is supervised by Sally Powell from the epartment of Corrections. Weaver resides at 1328 East 3900 South ith his grandmother. Weaver's mother resides at the house to be earched.

Affiant has interviewed Ms. Powell who alleges that on May 1, 1989, Weaver made numerous trips (5-6) between the houses and in act was at the house to be searched on the evening of May 10, 1989.

Affiant alleges through his experience and belief that 'eaver, being on Intense Supervised Parole, would not keep stolen ıroperty at his primary residence knowing that such a place could and s routinely searched by Parole Officers. Further, affiant alleges :hat there is probable cause, because of the above-mentioned :ircumstances and Weaver's activity, to believe that the stolen ıroperty sought to be seized is located at the property to be ɜearched hereby.

Such evidence would be cancealed, destroyed, damaged, or ıltered if sought by subpoena. A no-knock warrant is not requested ıere. It is requested that the home be searched during regular hours in a manner least intrusive to other occupants.

(Continued on page 4)

WHEREFORE, the affiant prays that a Search Warrant be issued for the seizure of said items:

(x) in the day time.

AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME this 12 day of May, 1989.

JUDGE IN THE THIRD CIRCUIT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

11s/3445E

/ID E. YOCOM
unty Attorney
: GREGORY G. SKORDAS
puty County Attorney
urtside Office Building
1 East 400 South, 3rd Floor
lt Lake City, Utah 84111
one: (801) 363-7900

IN THE THIRD CIRCUIT COURT, SALT LAKE DEPARTMENT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

SEARCH WARRANT

No. _____

OUNTY OF SALT LAKE, STATE OF UTAH

'o any peace officer in the State of Utah.

'roof by Affidavit under oath having been made this day before me by)etective L. Powers - SLCSO, I am satisfied that there is probable :ause to believe

That on the premises known as 1316 East 3900 South, the :astmost unit in a duplex located on 3900 South. The duplex is reddish-orange brick with a pink roof and a swamp cooler in the roof.

In the City of Salt Lake, County of Salt Lake, State of Utah, there is now certain property or evidence described as:

Two Ninetendo Games (brain and paddles);
One Cosmo 5" TV Model CTV 701;
Two Magnavox VCP Model #VR9602AT01;
One Tote Vision VCP;
One 9" Samsung TV;
One 9" Sony TV;
One Alpine AM/FM Cassette Car Stereo (black);
Panasonic Stereo AM/FM Cassette Car Stereo (black);
Two Samsong VCP Model VP 2215.

(Continued on page 2)

and that said property or evidence:

(x) was unlawfully acquired or is unlawfully possessed, or
(x) has been used to commit or conceal a public offense, or
(x) is being possessed with the purpose to use it as a means of committing or concealing a public offense, or
(x) consists of an item or constitutes evidence of illegal conduct, possessed by a party to the illegal conduct, or
(x) consists of an item or constitutes evidence of illegal conduct, possessed by a person or entity not a party to the illegal conduct. [Note requirements of Utah Code Annotated, 77-23-3(2)]

You are therefore commanded:

(x) in the day time

to make a search of the above-named or described person(s), vehicle(s), and premises for the herein-above described property or evidence and if you find the same or any part thereof, to bring it forthwith before me at the Third Circuit Court, County of Salt Lake, State of Utah, or retain such property in your custody, subject to the order of this court.

GIVEN UNDER MY HAND and dated this 12 day of May, 1989.

JUDGE OF THE THIRD CIRCUIT COURT

lls/3445E

RETURN TO SEARCH WARRANT

NO. _____

The personal property (listed below/set out on the inventory attached hereto) was taken from the premises located and described as 1316 E 3900 So

See attached

and from the vehicle(s) described as N/A

and from the person(s) of N/A

by virtue of a search warrant dated the 12 day of May, 1989, and executed by Judge of the above-entitled court:

I, Les Powers, by whom this warrant was executed, do swear that the (above/attached) inventory contains a true and detailed account of all the property taken by me under the warrant, on May 12, 1989.

All of the property taken by virtue of said warrant will be retained in my custody subject to the order of this court of or any other court in which the offense in respect to which the property or things taken, is triable.

Ted Lewis 815B

Subscribed and sworn to before me
this 16 day of May, 1989

JUDGE

:F'S OFFICE

DP # WRS 815B

CASE NUMBER 89-42191

ME OF OCCURANCE 1800

F THE CASE ng; Search Warrant

DEPUTY ASSIGNED CASE Cummings

PROPERTY WAS LOCATED &1328 E 3900 So

COURT Circuit

ANT VICTIM OWNER FINDER (circle one)

E Dusty's Vcm NAME

RESS 3400 S. State ADDRESS

VE PHONE

CHECK ONE EVIDENCE X FOUND PROPERTY ____ REL. TO OWNER ____ FOR DEST ____

LOCATED BY	EVIDENCE - DESCRIPTION	TYPE / QUANTITY
East 3900 So	Sampo Cassette Boom Box #01204151	1
East 3900 So	Cosmo 5" TV # 811003129	1
East 3900 So	Sampo Am/Fm/TV/Cassette Boom Box #8447245	1
E 3900 So	Samsung 9" TV #08804400844	1
E 3900 So	Sony Am/Fm Cassette Boom Box #1171166	1
E 3900 So	Samsung VCP Model VP2215 #9010205617	1
E 3900 So	Samsung VCP Model VP2215 ~~#9016364482~~ 9010206482	1 *
E 3900 So	JC Penney Am/Fm 8 track stereo w 1 speaker #744019 06192	1
E 3900 So	IBM Electric Typewriter. no serial # visible.	1
E 3900 So	Blue Day Pack (w) 2 table knives, 1 tin snip, 5 screwdrivers, 1-25' steel tape, 2- pliers; 1 wire snipps; 1- masking tape; 1 - paste wax; 1- tire inflation 1- can cleaner	1

SPECT OR ARRESTEE

ME ____ DOB ____

ME Wiesner, Michael Samuel DOB ____

ME ____ DOB ____

PROPERTY DISPOSITION

RETURN TO EVIDENCE BY THE 15th OF THE MONTH

DATE ____ DIVISION ____ OFFICER ____

RETAIN / WHY ____ RETURN TO OWNER ____

DESTROY / SELL ____ DATE OWNER NOTIFIED ____

SIGNED ____ DATE ____

89-42191

CASE NUMBER

SHERIFF'S OFFICE — EVIDENCE FORM

BIN# | BY ID# | DATE

DEPUTY: Powers DP #: 815B

CASE NUMBER: 89-42191

DATE & TIME OF OCCURANCE: 5/12 1800

NATURE OF THE CASE: Burg. & Search Warrant

DEPUTY ASSIGNED CASE: Cummings

ADDRESS PROPERTY WAS LOCATED: 1316 & 1328 E 3900 So

COURT: Circuit

COMPLAINANT VICTIM OWNER FINDER (circle one)

NAME: Dusty's Van

ADDRESS: 3400 S. State

PHONE:

NAME:

ADDRESS:

PHONE:

CHECK ONE EVIDENCE X FOUND PROPERTY ____ REL TO OWNER ____ FOR DEST ____

	WHERE LOCATED BY	EVIDENCE - DESCRIPTION	TYPE / QUANTITY
1	1316 E 3900 So	Large Nylon (grayish Green) soft bag and plastic bags	
2	1316 E 3900 So	envelope ladies Sam Bluff 2111 N. 500 E. Vernal Ut 84078 from Dusty's Van	1
7		#80601207M Item #7 Box has a Tote Vision w/box VCP	

SUSPECT OR ARRESTEE

NAME ____ DOB ____

NAME ____ DOB ____

NAME ____ DOB ____

PROPERTY DISPOSITION

RETURN TO EVIDENCE BY THE 15th OF THE MONTH

DATE ____ DIVISION ____ OFFICER ____

RETAIN / WHY ____ RETURN TO OWNER ____

DESTROY / SELL ____ DATE OWNER NOTIFIED ____

SIGNED ____ DATE ____

89-42191

CASE NUMBER

SALT LAKE COUNTY SHERIFF'S OFFICE | **CONTINUATION SHEET** | Page 2 of ___ | Case Number 89-42191

DESCRIBE PROPERTY STOLEN/RECOVERED BY QUANTITIY, MAKE, MODEL, COLOR, SERIAL NUMBER, AND DOLLAR VALUE

they check the other photos to make sure & again ~~too~~ they were both positive & even made the comment when they say him he made the same face as is in the photo.

(2) On 5/11 Det Powers ~~cont~~ contacted Dusty's & contacted Mike Hatch the assistant manager who said they needed to add a couple of things to the list

2 - Nintendo Games (brown paddles)	
1 - Cosmo 5" TV Model CTV 701	$ 200
2 - Magnavox VCP Model VR9602AT01	$ 400
✓ 2 - Tele Vision VCP	$ 200
✓ 1.9" Samsung TV"	$ 229
1.9" Sony TV.	$ 224
✓ 1.5" Cosmo TV	$ 200
1 - Alpine Am/Fm Cassette Car Stereo (Blk)	400
1 - ~~A~~ Panasonic Stereo Am/Fm Car Stereo (Blk)	$ 200
2 - Samsung VCR Mode VP2215	$ 400

DEFENDANT'S EXHIBIT 2